## SUBJECT INDEX



### Table of Authorities

A. Decisions:

IN THE

# SUPREME COURT

OF THE

# UNITED STATES

**October Term, 1944.**

No.....

---

MARY VIELLE LUKIN, MARY LUKIN, Administratrix of the Estate of John Vielle, deceased; MARY VIELLE, FRANCIS VIELLE, PETER VIELLE, CECILLE VIELLE TROMBLEY, ISABEL VIELLE, THERESA JARVIS, and MARTHA VIELLE GALLINEAUX, Petitioners,

vs.

FRANK L. CHATTERTON, Respondent.

---

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

---

### STATEMENT OF MATTER INVOLVED.

This statement of the matter involved is made to correct certain statements contained in the petition and to supply omissions therein.

On January 24th, 1921, The United States issued to John Vielle, an Indian of the Blackfeet Tribe, a trust patent to lands within the Blackfeet Reservation. This

patent was issued in lieu of a similar patent issued May 23rd, 1918. (R. pp. 37, 38.)

On July 1st, 1920, Vielle made written application for the issuance to him of a fee patent covering all of the lands involved in the trust patents. (R. pp. 42, 43.) The application was signed by John Vielle and sworn to before Horace G. Wilson, the Supervisor of The Blackfeet Reservation. (R. pp. 46, 58.)

The original application thus signed and sworn to was forwarded to The Indian Office at Washington, D. C. (R. p. 41.) with a letter from the Chief Clerk of The Blackfeet Agency recommending the issuance of a fee patent. (R. p. 45.)

Under date of November 22nd, 1920, the Supervisor of the Agency advised the Commissioner of Indian Affairs that Vielle was competent to manage his own affairs and recommended issuance of fee patent. (R. p. 44.)

On December 20th, 1920, the Secretary of The Interior approved the application for fee patent and referred it to the Commissioner of The General Land Office for action. (R. p. 46.)

On January 25th, 1921, fee patent was issued to Vielle, (R. pp. 23, 24.) After recording, (R. p. 25), the fee patent was forwarded to The Blackfeet Agency where it was at the time of trial. There is no record of the patent having been actually delivered to Vielle. (R. p. 39.)

The land was assessed for taxation purposes by Glacier County, Montana, in 1921. The taxes were not paid and the land was sold for taxes. On July 3rd, 1929, tax deed was issued to Glacier County for taxes, penalty and interest then due amounting to $464.55. (R. pp. 27-29.)

On April 10th, 1931, more than ten years after the issuance of the fee patent and more than two years after the issuance of tax deed, Vielle filed an affidavit with the Superintendent of The Blackfeet Agency stating that he *never applied for the fee patent;* that he never wanted a fee patent or represented that he was capable of handling his own affairs. He asked for a cancellation of the fee patent. (R. pp. 40, 41.) This affidavit was transmitted to The Indian Office at Washington, D. C. apparently, with letter from the Superintendent dated March 11th, 1932. (R. p. 46.) The Commissioner of Indian Affairs replied on March 30th, 1932, that the records of that office disclose "that John Vielle made application for the fee patent in question, and that said application is in his own handwriting and sworn to before Horace G. Wilson on July 1st, 1920." The Commissioner held that there were no grounds for cancellation of the patent and returned all papers to the Agency. (R. p. 46.)

On September 12th, 1932, Vielle made and filed a further affidavit with The Indian Superintendent, (Exhibits 11 and 12, R. pp. 47-49.) In this affidavit he admits signing the application for fee patent, but states that he "did not know that a fee patent would issue to me but that I was signing partnership papers with Louis S. Irvin and George Starr to go into the oil business." He states that he refused to accept the patent and did not want it. He asked again that the fee patent be cancalled. This affidavit was transmitted to the Commissioner of Indian Affairs on October 11th, 1932. (R. p. 50.) On October 26th, 1932, the Commissioner replied that, "as stated in our letter of March 30th, 1932, John Vielle having made application for fee patent, which application

was sworn to before Superintendent Wilson July 1st, 1920, his recent affidavit stating that he did not know he was making application for fee patent does not vitiate this formal application, and, therefore, there are no grounds for cancellation of the fee patent in question." (R. p. 58.)

In the year 1933 Chatterton leased the land from Glacier County, (R. p. 32) and, on November 7th, 1935, contracted to purchase the land for the price of $756.00 (R. p. 31.) He completed his contract payments and in addition paid the taxes assessed against the land for the years 1936 to 1941 inclusive. The total paid by him to and including the year 1941 was $870.51 exclusive of interest. (R. pp. 30, 31.) In addition Respondent expended a considerable sum of money in improving the land. (R. pp. 32-34.)

On October 22nd, 1940, Glacier County gave Respondent a quit claim deed to the property. (R. pp. 25-26.)

John Vielle died on July 8th, 1941. (R. p. 51.) Between October, 1932, and the date of his death he took no steps, either in the Interior Department or the courts, to review the decision of The Commissioner of Indian Affairs rendered on October 26th, 1932. (R. p. 58.) During this ten year period Respondent bought the land and expended money in its improvement.

Although there is no proof of that fact, it appears that on November 17th, 1941, Mary Lukin was appointed Administratrix of John Vielle's estate. (R. p. 2.)

On November 29th, 1941, Respondent commenced an action in The District Court of Glacier County, Montana, to quiet his title to the lands in question. (R. pp. 2, 3.) On December 24th, 1941, the defendants filed their Answer and Cross-Complaint in the action. (R. pp. 3-10.)

In the Answer and Cross-Complaint it is stated that the defendants (petitioners herein) are heirs at law of John Vielle, deceased. (R. p. 4.) The proof, however, only shows that Peter Vielle, (R. p. 51), Mary Lukin, (R. p. 54), and Isabelle Jarvis, (R. p. 55), were related to him.

The Answer and Cross-Complaint after denying that Respondent is the owner and in possession of the lands admits that defendants claim some interest and estate therein. (R. pp. 3, 4.) By two separate defenses and Cross-Complaints the defendants set up:

1. That the fee patent was issued by the United States to John Vielle "without his having made application therefor, against his will and without his consent," and that he never accepted the patent and refused to accept the same. (R. p. 5.) That the lands were not subject to taxation under the provisions of sections 348 and 349, Title 25 U. S. C. A. That the tax deed to Glacier County is, therefore, void as is the deed from Glacier County, Montana, to Respondent. (R. pp. 7, 8.)

2. That the proceedings under which Glacier County took tax deed to the land did not comply with the statutory requirements of the State of Montana. (R. p. 9.)

It thus appears that petitioners had two separate and distinct theories: (1) The land was not subject to taxation under the Federal Statutes; (2) The tax deed proceedings did not comply with the Montana Statutes. Since petitioners contested the validity of the tax deed proceedings under the Montana Statutes, Respondent on April 15th, 1942, filed an affidavit in the action under the provisions of section 2214 Revised Codes of Montana, 1935, setting up payments made by him in purchasing

the land, in payment of taxes thereon, and in improving the same. (R. pp. 10-12.) Order to Show Cause was issued, (R. p. 12), and petitioners moved to quash and answered, raising the same questions as had been raised by their original Answer and Cross-Complaint. (R. pp. 13, 14-18.) On April 22nd, 1942, the case came on for hearing under the Order to Show Cause and the Answer thereto, the hearing being limited to two questions: (1) The amount paid by Respondent for purchase price, taxes and improvements; (2) whether the land was subject to taxation by Glacier County. (R. p. 22.)

At the hearing the Answer was deemed denied without the necessity of a written reply. (R. p. 23.) The Respondent introduced in evidence the fee patent from The United States to John Vielle, (R. pp. 23-25); the tax deed to Glacier County, (R. pp. 27-29); and, the quit claim deed from Glacier County to himself, (R. pp. 25, 26.) He also introduced evidence with respect to amounts paid by him for the land together with taxes and improvements thereon. (R. pp. 29-35.) Petitioners introduced in evidence the trust patent, (R. pp. 37, 38); the affidavits made by John Vielle in 1931 and 1932, heretofore noticed, (R. pp. 40-41, 47-49); a letter from the Superintendent transmitting one of the affidavits, (R. p. 50); and, some evidence regarding the value of the improvements on the land, (R. pp. 51-57.) Defendants also introduced evidence to show that the Agency had no record of the delivery of the fee patent to John Vielle, (R. pp. 38, 39), and that Vielle could not read and could only write his name. (R. p. 53.)

No objection was made by petitioners to the introduction in evidence of the tax deed to Glacier County, (R.

p. 27), and no attempt was made to show that the tax proceedings were void under the State Statutes. Respondent introduced in evidence the application of John Vielle for fee patent from the Agency files, (R. pp. 42, 43), the approval thereof by the Supervisor, the Chief Clerk and the Secretary of The Interior, (R. pp. 44, 45, 46), and the decisions of The Commissioner of Indian Affairs refusing a cancellation of the patent. (R. pp. 46, 58.) Both parties then rested and the matter was submitted to the Court. (R. p. 58.)

On October 6th, 1942, the District Court of Glacier County entered its Order, (R. pp. 18, 19), finding, (1) That John Vielle became the owner in fee simple of the land on January 25th, 1921; (2) that thereafter Glacier County assessed and levied taxes on the land and that such taxes were valid; (3) that John Vielle failed to pay the taxes levied and Glacier County acquired the land by tax deed; (4) that Glacier County deeded the land to Respondent who paid therefor and expended thereon $1,270.51. The Order required that within 30 days petitioners should deposit in Court the above sum "to abide the result of this action," and that "should said defendants fail to make such deposit within the time aforesaid, decree granting title to said lands in plaintiff shall be entered herein." No deposit was made by petitioners as ordered and on November 10th, 1942, their default was entered, (R. pp. 61, 62), final hearing was had, (R. pp. 59-60), and on November 18th, 1942, final decree was entered in favor of Respondent. (R. pp. 19-21.) From this decree an appeal was taken to The Supreme Court of Montana. (R. p. 63.) The only specifications of error set out in petitioners' Brief in The State Supreme Court appear on

pages 45 to 46 of petitioners' Brief here. On December 12th, 1944, The State Supreme Court affirmed the lower Court's decree. (R. pp. 65-69.) Petition for rehearing was filed on January 9th, 1945. (R. pp. 69-78.) On January 12th, 1945, objections to a rehearing were filed, (R. pp. 79-87), and on January 23rd, 1945, a rehearing was denied. (R. p. 88.) Then followed this proceeding by Writ of Certiorari.

## SUMMARY OF ARGUMENT.

1. The uncontradicted evidence shows that Vielle on July 1st, 1920, made an application for fee patent to the lands here involved; that he was found to be competent to manage his own affairs; that his application for fee patent was approved by the proper officers and issued by the proper department of The United States. Such officers and departments acted within their jurisdiction and the patent so issued cannot be declared void in a collateral proceeding such as this, brought 20 years after the issuance of such patent, and the findings and decisions of The Secretary of The Interior are conclusive. In any event, the ex parte affidavits of the deceased upon which petitioners rely to show a mistake of their ancestor in making the application are wholly insufficient as evidence to justify the State Court in declaring the fee patent void.

2. Where a patent has been applied for, and such application is approved by The Secretary of The Interior who orders the issuance of the patent; and, thereafter the patent is signed, sealed and recorded and forwarded for delivery, an actual, manual delivery to the grantee is not necessary to pass title.

3. Where a fee patent has been issued upon the application of the Indian the land covered by such fee patent

then becomes subject to taxation by the State authorities under the provisions of section 349, Title 25 U. S. C. A. (34 Stat. 182.) In all the cases relied upon by petitioners the fee patent was issued without the application or consent of the Indian. The cases decided by this Court which are here relied upon by petitioners were all decided under different Statutes and different facts.

4. The petitioners were given the right and opportunity to show that the lands were not subject to taxation by the State and they availed themselves of this opportunity. Only after all of the evidence upon this matter was in did the Court find that the taxes were valid and require the petitioners to deposit money in Court to abide the result of the action in so far as the validity of the tax deed proceedings under the State laws were concerned. The requirements of section 2214 of the Montana Codes as interpreted by the State Courts did not deprive petitioners of property without due process of law.

5. There is no proof of heirship so far as concerns the petitioners and they have no standing in this Court.

## ARGUMENT

1. *The fee patent issued to John Vielle is valid as against the attack here made.*

The evidence is uncontradicted that on July 1st, 1920, a written application for a fee patent, signed and sworn to by John Vielle before The Superintendent of The Blackfeet Agency was lodged with that Superintendent by Vielle. (R. pp. 42-43, 58.) The Agency Superintendent found Vielle capable of managing his own affairs free from government supervision and recommended issuance of fee patent. (R. p. 44.) The application for fee patent

was transmitted to The Secretary of The Interior with recommendations for its issuance. (R. p. 45.) The Secretary of The Interior approved the recommendation and referred it to The Commissioner of The General Land Office for action. (R. p. 46.) The General Land Office issued and recorded the patent and transmitted it to The Agency Superintendent. (R. pp. 23-25.) The attack made upon the fee patent by the Answer and Cross-Complaint was that it was issued "without his having made application therefor, against his will and without his consent." (R. p. 5.) The fee patent was introduced in evidence by Respondent as a part of his title papers. It is the highest evidence of title it is possible to introduce.

Pittsmont Copper Co. v. Vanina,
71 Mont. 44, 227 Pac. 46.

The petitioners do not show a better title in themselves, but now attack the issuance of the fee patent because of an alleged *mistake* on the part of Vielle when he signed the application. No such mistake was alleged in petitioners' Answer and Cross-Complaint in the lower Court. In any event, such an attack is collateral and will not be permitted.

St. Louis S. & R. Co. v. Kemp,
104 U. S. 636, 26 L. Ed. 875;

United States v. Maxwell Land Grant Co.,
121 U. S. 325, 30 L. Ed. 949;

De Guyer v. Banning,
167 U. S. 723, 42 L. Ed. 340;

Pittsmont Copper Co. v. Vanina,
71 Mont. 44, 227 Pac. 46.

The jurisdiction of The Commissioner of Indian Affairs, The Secretary of The Interior, and the General Land Office over the land is beyond controversy.

By specific Statute, (24 Stat. 390, 34 Stat. 182, Title 25 U. S. C. A. sec. 349), it is provided:

> "That The Secretary of The Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrances, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent."

Before the Secretary can act there must be either an application for the patent by the Indian or his consent to its issuance.

United States v. Benewah County,
290 Fed. 628;

Glacier County v. United States,
99 Fed. (2d) 733;

United States v. Nez Perce County,
95 Fed. (2d) 232;

Larkin v. Pough,
276 U. S. 431, 72 L. Ed. 640;

44 Stat. 1247, Title 25 U. S. C. A. sec. 352 a.

We have here an application for fee patent signed and sworn to by the Indian. We have a finding of competency by the proper authorities. We have approval of the application by all of the governmental officers from the Agency Superintendent to The Secretary of The Interior. We have acquiescence by Vielle for the periods of January, 1921, to April, 1931, a period of more than 10 years, and from October, 1932, to December, 1941, when petitioners' Answer and Cross-Complaint in this action was filed.

The cases of:

Borax Consolidated, Ltd. v. City of Los Angeles,
296 U. S. 10, 80 L. Ed. 9;

Wright v. Roseberry,
121 U. S. 488, 30 L. Ed. 1039;

cited by petitioners, (pp. 22, 41), are not in point. There is here no lack of jurisdiction or authority, but at most the issuance of a patent upon a mistake made by the grantee and not by any officer of the government. Under such circumstances the findings and action of The Commissioner and Secretary are conclusive, in the absence of a direct proceeding to have the patent declared void.

Small v. Rakestraw,
28 Mont. 413, 12 Pac. 746;

Graham v. Great Falls W. P. & T. Co.,
30 Mont. 393, 76 Pac. 808;

Love v. Flahive,
33 Mont. 348, 83 Pac. 882;

50 C. J. 1081, sec. 471.

In any event, the ex parte affidavits of John Vielle, conflicting in their statements, and containing hearsay conclusions and self serving declarations, were not admissible as proof of any mistake on the part of Vielle; nor were they admissible under the pleadings.

Sec. 10636, R. C. M. 1935;

31 C. J. S. 948 et seq;

Gilcrest v. Bowen,
95 Mont. 44, 24 Pac. (2d) 141.

Proper objection to their admission was made. (R. pp. 40, 47.)

2. *Manual delivery of the patent was not necessary to convey title to Vielle.*

The fact that the p patent was not manually delivered to Vielle is of no conseq equence.

United States v. Schurz,
102 U. S. 378, 26 L. Ed. 167;

State v. Monroe,
83 Mont. 556, 568, 274 Pac. 840.

The patent here was s applied for by Vielle; was issued upon order of The Secr cretary of The Interior; was signed and sealed and duly re ecorded; and, was transmitted for delivery.

Except for the inadm missible affidavits there is no evidence that the patent w was not kept in the Agency files because Vielle wanted i it there. His acquiescence for ten years leads to a belief t that such was the fact.

3. *Upon issuance of the fee patent the land became subject to taxation by Glacier County.*

The Federal Statute e under which the fee patent in question was issued, (34 34 Stat. 182, Title 25 U. S. C. A. sec. 349), provides that at after issuance of fee patent,

"all restrictions as to sale, incumbrances, or taxation of said land shall be e removed."

Such provision must t be read as a part of the patent in question.

Swendig v. Washington Water Power Co.,
265 U. S. 322, 68 L. Ed. 1036;

There is nothing in any treaty between The United States and The Blackfeet Tribe (25 Stat. 13), or in any Statute, (Act of Feb. 8, 1887, Title 25 U. S. C. A. sec. 348), or in The Enabling Act of Montana, (25 Stat. 676), quoted on pages 29 to 32 of petitioners' brief which limits the right of Congress to remove the immunity from taxation existing during the trust period, where the fee patent is issued *upon the application of the Indian or with his consent.*

In all of the cases cited by petitioners on pages 38 and 39 of their brief it appeared by stipulation or evidence that the fee patent was issued without the application of the Indian or without his consent. None are in point here. Thus in Glacier County v. United States, 17 Fed. Supp. 411, 99 Fed. (2d) 733, there was an express stipulation to such effect.

In Jackson County v. United States, 308 U. S. 343, 84 L. Ed. 313, it appeared that the fee patent was issued over the objection of the Indian.

In Ward v. Love County, 253 U. S. 17, 64 L. Ed. 751, no patent in fee issued under 34 Stat. 182 was involved. The land was merely allotted under a law which provided that "the lands shall be nontaxable while the title remains in the original allottee."

The same is true so far as concerns Carpenter v. Shaw; 280 U. S. 36, 74 L. Ed. 478; and Choate v. Trapp, 224 U. S. 665, 56 L. Ed. 941.

The decision of The Supreme Court of Montana in this case, (154 Pac. (2d) 798), is based upon an entirely different Statute and upon an entirely different set of facts than were involved in the above decisions and is not in conflict therewith.

4. *The order of the Court requiring deposit of money under the provisions of section 2214 Revised Codes of Montana and entry of default decree did not deprive petitioners of their property without due process of law.*

Under the provisions of section 2214 Revised Codes of Montana, 1935, (quoted at pages 19 and 20 of petition) the lower court, upon application that money be deposited, is required to first determine whether the land involved was legally subject to taxation.

State ex rel Jensen v. Dist. Ct.,
103 Mont. 461, 64 Pac. (2d) 835;

State ex rel Souders v. Dist. Ct.,
92 Mont. 272, 12 Pac. (2d) 852.

Such was the purpose of the hearing held on April 22nd, 1942. (R. p. 22.) At that hearing the petitioners were accorded every opportunity to introduce evidence on that question. After such hearing the lower Court specifically found, (R. p. 18), "that the taxes so assessed and levied by Glacier County, Montana, were in all respects valid." Only after such finding did the Court require the deposit of any money to abide the result of the action.

No objection was made by petitioners to the introduction in evidence of the tax deed, (R. p. 27), and, no attempt was made by them to show that the tax proceedings were void.

In its opinion The Supreme Court of Montana said, (R. p. 68):

> "The appellants put their defense on the ground that the lands in question were exempt from state tax levies and from sale upon non-payment of taxes, a defense which we have found to be untenable."

Under the construction placed upon section 2214 by The Supreme Court of Montana, that Statute does not offend against either section 1 of the Fourteenth Amendment or the 5th Amendment to The United States Constitution.

Wilson Real Estate Co. v. Milwaukee, (Wis.)
138 N. W. 642;

Lombard v. McMillan, (Wis.)
70 N. W. 673;

Eberhard v. Purcell, (Ida.)
296 Pac. 593;

Moore v. Byrd, (N. C.)
23 S. E. 968;

State ex rel Souders v. Dist. Ct.,
92 Mont. 272, 12 Pac. (2d) 852.

Before the entry of the default decree, or any order in the case, the petitioners were afforded the right to contest the validity of the tax. Of this opportunity they availed themselves, both in the lower and The Supreme Court. When, upon the evidence submitted the Court found that the tax was valid, petitioners no longer had any property rights to be protected, other than the right to contest the tax deed proceedings under the limitations of section 2214. This they refused and they may not now complain.

The statements appearing in the petition herein, (pp. 14, 18), and the brief in support thereof, (pp. 42, 43), that petitioners were denied the opportunity to show the invalidity of the tax are wholly incorrect and unwarranted.

5. *Petitioners have no standing in Court.*

Petitioners claim to be the heirs of the deceased, John Vielle. (R. pp. 4, 7 and 9.) This was denied by the Respondent. (R. p. 23.) The only evidence on the matter were statements showing that Peter Vielle was the son, (R. p. 51), and Mary Lukin, (R. p. 54), and Isabelle Jarvis (R. p. 55) were daughters of the deceased. There was no proof of relationship as concerned Mary Vielle Lukin, Mary Vielle, Francis Vielle, Cecille Vielle Trombley or Martha Vielle Gallineaux.

There was no determination of heirship under the provisions of 45 Stat. 161, 48 Stat. 647, (Title 25 U. S. C. A. 372), providing that when any Indian to whom an allotment of land has been made, dies before the

expiration of the trust period and before the issuance of a fee simple patent, The Secretary of The Interior shall ascertain the legal heirs of the deceased after notice and hearing and his decision shall be final and conclusive.

6. CONCLUSION.

By their Cross-Complaints herein, the petitioners sought to have a State Court thrust upon The United States a trusteeship which its officers had twice declined. They sought in that Court to have a patent issued by The United States declared void, not because its officers did not properly issue such patent, but, because, after a period of more than 10 years, the grantee in that patent alleged he had made a mistake in applying for the patent. Petitioners do not seek to have the patent cancelled under section 352a Title 25 (44 Stat. 1247), but collaterally seek to avoid the force and effect of that patent. The evidence upon which they rely consists of ex parte affidavits, conflicting in their statements and consisting of self serving declarations, conclusions and hearsay. From 1921 to 1931 and from 1932 to 1941 their ancestor made no attack upon the fee patent. He acquiesced in the action of the officers of The United States. New rights have intervened and petitioners now refuse to reimburse Respondent for moneys paid out by him. Under such circumstances they have no standing here.

It is respectfully submitted that the petition for Writ of Certiorari should be denied.

Respectfully submitted,

H. C. Ware

Great Falls, Montana,
Attorney for Respondent.